STATE OF MICHIGAN

COURT OF APPEALS

THOMAS ROTH,

Plaintiff-Appellant,

v

MICHIGAN PROPERTY & CASUALTY GUARANTY ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED
February 19, 2004

No. 244528
Oakland Circuit Court
LC No. 01-033067-NO

Before: Schuette, P.J., and Meter and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff purchased a BMW automobile from a private seller in Canada. Law enforcement authorities later confiscated the vehicle from plaintiff on the ground that it had been stolen. No charges were lodged against plaintiff in connection with the theft. Defendant's policy provided that it would pay benefits for a non-collision loss of the vehicle occurring under enumerated circumstances, but specifically excluded coverage for a loss caused by destruction or confiscation resulting from illegal activity by the insured. Defendant denied plaintiff's claim for benefits on the ground that the loss was not covered under any provision of the policy.

Plaintiff filed suit alleging that defendant breached its contract by refusing to pay benefits for the loss of the vehicle. The trial court granted summary disposition in favor of defendant.[1]

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

[1] The trial court did not specify the subrule under which it granted summary disposition. The record reflects that the trial court reviewed materials outside the pleadings. We therefore review the trial court's decision as one granted pursuant to MCR 2.116(C)(10). *Detroit News, Inc v Policemen & Firemen Retirement System*, 252 Mich App 59, 66; 651 NW2d 127 (2002).

An insurance contract should be read as a whole, with meaning given to all terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). An insurance contract is clear and unambiguous if it fairly allows only one interpretation. *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 567; 596 NW2d 915 (1999). If the language of an insurance contract is clear, its construction is a question of law for the court. See *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). An insurance contract is ambiguous if, after reading the entire contract, its language can reasonably be understood in different ways. *Nikkel*, *supra*, 566-567. Ambiguities are to be construed against the drafter. *State Farm Mutual Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996). Exclusions are strictly construed in favor of the insured. *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 333; 632 NW2d 525 (2001). "Exclusions limit the scope of coverage provided and are to be read with the insuring agreement and independently of every other exclusion." *State Farm Mutual Auto Ins Co v Roe (On Rehearing)*, 226 Mich App 258, 263; 573 NW2d 628 (1997).

Plaintiff's assertion that the list of covered non-collision losses must be interpreted to include confiscation under circumstances such as those presented by this case because any other interpretation would render the pertinent exclusion nugatory is without merit. No policy language indicated that benefits would be paid for any non-collision losses other than those specifically enumerated. The pertinent exclusion provided that benefits would not be paid if the vehicle was destroyed or confiscated due to illegal activity on the part of the insured. The list of non-collision losses and the pertinent exclusion can be harmonized so that each is given reasonable effect. See, generally, *Busch v Holmes*, 256 Mich App 4, 8; 662 NW2d 64 (2003). The list of non-collision losses for which benefits would be paid, read in conjunction with the pertinent exclusion as required, *Roe*, *supra* at 263, indicated that benefits would be paid for non-collision losses occurring under specific circumstances but would not be paid for either destruction or confiscation resulting from illegal activity by the insured. The policy language is clear and unambiguous, and it fairly admits of but one interpretation. *Nikkel*, *supra* at 567. Contrary to defendant's apparent argument, an exclusionary clause does not *create* coverage but instead "limit[s] the scope of coverage provided." See *Roe*, *supra* at 263. Moreover, the coverage for "theft" did not apply in the present circumstances. The trial court did not err in granting summary disposition to defendant. *Henderson*, *supra* at 353.

Affirmed.

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens